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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/698,010

10/30/2003

Michael E. Landry

5259-10704

7409

23492

7590

04/14/2006

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EXAMINER

SWIGER III, JAMES L

ART UNIT

PAPER NUMBER

3733

DATE MAILED: 04/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/698,010

Applicant(s)

LANDRY ET AL.

Examiner

James L. Swiger

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --****Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 21-45 and 56 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-38, 40-45 and 56 is/are rejected.
- 7) ☒ Claim(s) 39 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 10/7/2005.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 21-22, 25-26 and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Lutz (US 6,183,472). Lutz discloses a pedicle screw and assembly having a body (see fig. 4), arms extending from the body (portions adjacent to 26 and 28) each having internal threading (20) and each having an outer flange (16 and 18) that are capable of being attached to a detachable member (64 and 66). The device also includes a slot (34) for receiving an elongated member. Lutz further discloses a sleeve (42), a collar wherein the effective diameter of the body is larger than the diameter of the arms (see Fig. 4; body width at 14 compared to arm width at 18).

Claims 40, 42-44 are rejected under 35 U.S.C. 102(b) as being anticipated by Biedermann et al. (US 5,443,467). Biedermann et al. disclose a device having a body (see Fig. 2) that can rotate relative to the bone fastener (Fig. 2, item 3). Biedermann et al. further disclose a recess (6), described as U-shaped because of extending arms (see Fig. 2). The arms of the collar portion (5) have a smaller diameter than the bottom of the collar (see bottom portion of item 5, Fig. 1). Each arm also has an internal threading (10), a pressure disk that is considered a ring (18) that enables relative motion while coupled between the bone fastener and collar.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lutz '472 in view of Biedermann '467. Lutz discloses the claimed invention except for a ring and a collar that is capable of rotating with respect to a bone fastener.

Biedermann discloses a pressure disk that is considered a ring (18) that enables the collar and bone anchor to be slidably disposed and be more secured (Col. 3, lines 45-62). It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the device of Lutz having at least a ring and a collar and fastener able to angulate when being slidably disposed in view of Biedermann to enable the collar and bone anchor to be slidably disposed and be more secured.

Claims 27-29, 32-33, and 45-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lutz in view of Mellinger et al. (US 6,302,888). Lutz discloses the claimed invention except for flanges with an indentation, a female modified thread comprising a female proximal surface, and a male modified thread comprising a male proximal surface and a male distal surface, wherein the male proximal surface is configured to couple with the female distal surface, a male modified thread that slopes forward at an angle, all of modifications of which inhibit separation of the arms.

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Mellinger et al. disclose an indentation (34) capable of associating with the flanges that allow the vertical faces to associate with an instrument in use (col. 4, lines 18-28), both male and female modified threads (See Fig. 6, items 40 and 50) that, with their respective proximal and distal sides, are capable of coupling with one another to better secure the arms in place (Col. 4, lines 28-42). It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the device of Lutz having at least an indentation and a male/female modified thread in view of Mellinger et al. to allow a more secure attachment to an instrument and to better secure the arms, respectively.

Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lutz '472 in view of Jackson (US 6,368,321). Lutz discloses the claimed invention except for one or more threaded openings proximate to at least one of the flanges. Jackson discloses a device having two threaded bores (53 and 54) that allow for better securement to a "ball-shaped member" or in the instant case, a rod member (Col. 4, lines 63-67 through Col. 5, lines 1-5). It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the device of Lutz having at least threaded openings in the side of the collar to allow attachment and better securing of the rod member in use.

Claim 35-38 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Biedermann et al. '467 in view of Lutz '472. Biedermann discloses the claimed invention except for flanges that are configured to couple with a sleeve. Lutz discloses flanges (16 and 18) that are capable of coupling with a sleeve (64 and 66) and (Col. 3,

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lines 6-10, and Col. 3, lines 31-43). It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the device of Biedermann et al. having at least flanges that may be coupled to a sleeve in view of Lutz to better couple the two items together.

#### ***Allowable Subject Matter***

Claim 39 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James L. Swiger whose telephone number is 571-272-5557. The examiner can normally be reached on Monday through Friday, 8:30am to 5pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

 4/10/2006

JLS

  
EDUARDO C. ROBERT  
SUPERVISORY PATENT EXAMINER